

(2013) 08 BOM CK 0062
In the Bombay High Court
Case No : First Appeal No. 307 of 2007

Laurinda Gomes and Others	Vs	APPELLANT
Janu Hari Gaude and Another		RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2013) 5 ABR 1239

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : E. Afonso, for the Appellant;

Final Decision : Partly Allowed

Judgement

U.V. Bakre, J.—The above appeal and the cross-objection shall be disposed of by this common judgment since both are directed against the same judgment and award dated 21/09/2006 passed by the learned Presiding Officer, M.A.C.T., Panaji in Claim Petition No. 87/2001. Parties shall hereinafter be referred to in the manner in which their names appear in the cause title of the Claim Petition.

2. The claimants who are four in number had filed the said claim petition u/s 166 of the Motor Vehicles Act (the Act, for short) for grant of total compensation of Rs. 10,00,000/- on account of death of the husband of the claimant No. 1 and father of claimant Nos. 2, 3 and 4 in a motor vehicular accident.

3. Case of the claimants, in short, was as follows:

On 03/03/2001, the deceased was carrying school children in his tempo trax bearing No. GA-01-C-1016 from Sharda Mandir High School, Miramar to St. Estevam. At about 13.10 hours when he reached at Ribandar Patto near Hoble's garage, a mini bus bearing No. GA-01-X-0185 driven by the respondent No. 1 and belonging to the respondent No. 2 came from opposite direction on the side of tempo trax and dashed against it. The said tempo trax driven by the deceased was completely on its left side of the road. As a result of the accident all the

occupants of the tempo trax were injured and the deceased and two school children died, on account of the injuries sustained in the said accident. The accident occurred entirely due to rash and negligent driving of the said mini bus by the respondent No. 1.

4. The claimants stated in the petition that the deceased was 50 years old and was running a bar & restaurant and had a contract of taking school children to Sharda Mandir High School and back and his monthly income was Rs. 15,000/-. It was alleged that the deceased was the sole earning member of their family and they were totally dependent on him.

5. The respondent No. 1, who was the driver of the offending vehicle, did not file any written statement.

6. The respondent No. 2, in its written statement, denied that the accident was caused due to rash and negligent driving of the said mini bus by the respondent No. 1. It was further alleged that the accident occurred due to the rash and negligent driving of the tempo trax by the deceased. The respondent No. 2 denied that the deceased was running bar and restaurant and had a contract to take school children to Sharda Mandir High School and back.

7. Issues were framed by the learned Tribunal as per the rival contentions of the parties. The claimants examined the claimant No. 1 as CW1, one Jeeth Bopaih as CW2, Shri Esteann Afonso as CW3, Peter Rangel as CW4 and Mahesh Naik as CW5. The respondents did not lead any evidence, in defence.

8. Upon consideration of the entire evidence on record the learned Tribunal held that the respondent No. 1 drove the said mini bus in a rash and negligent manner and caused the accident in which the deceased husband of the claimant No. 1 died on account of injuries sustained by him. The Tribunal held that the net income of the deceased was Rs. 3500/- per month. The Tribunal used the multiplier of 11 considering that the age of the deceased was 50 years as on the date of accident and deducted 1/3rd towards the personal expenses from the total and arrived at the sum of Rs. 3,08,000/- as the loss of dependency. The Tribunal further granted Rs. 6,163/- towards medical expenses; Rs. 2,500/- towards funeral and other religious rites; Rs. 2,500/- towards transport and other miscellaneous expenses; Rs. 15,000/- towards loss of love and affection and loss of estate and Rs. 15,000/- to the claimant No. 1 only towards the loss of consortium. Consequently, the claimants were held to be entitled to the total compensation of Rs. 3,50,000/- and the respondents were ordered jointly and severally to pay the same to the claimants along with interest at the rate of 6% per annum on a sum of Rs. 1,81,163/- (i.e. excluding the future loss of dependency) from the date of filing of petition, till the date of payment of entire amount. The amount of Rs. 50,000/- paid to the claimants in terms of order dated 27/06/2002 in Miscellaneous Claim Petition No. 75/2001 was ordered to be adjusted along with the interest. It was further ordered that if the amount payable is not paid within a period of one month, the claimants shall be entitled

to interest at the rate of 6% per annum on the entire sum payable after the period of one month.

9. Aggrieved by the quantum of compensation granted by the learned Tribunal, the claimants filed the above First Appeal and the respondents filed the cross-objection.

10. There is no challenge to the findings of the learned Tribunal regarding the rashness and negligence of the respondent No. 1, who was driving the said mini bus. There is no dispute that the accident was caused by the respondent No. 1 and as a result of the said accident the husband of the claimant No. 1 and father of claimant Nos. 2, 3 and 4 sustained fatal injuries which resulted in his death.

11. The only question which arises for determination is about the quantum of the compensation to which the claimants are entitled.

12. Mr. Afonso, learned Counsel appearing on behalf of the claimants submitted that there is convincing evidence on record to hold that the deceased was running bar and restaurant at Marcela in the name and style of "Leo Bar and Restaurant" besides driving the school bus, on contract basis. According to him, there is ample evidence on record to hold that the monthly income of the deceased was about Rs. 15,000/-. He, therefore, submitted that the Tribunal erred in holding that the monthly income of the deceased was only Rs. 3,500/-. He further pointed out that the claimants had produced the birth certificate of the deceased as part of Exhibit 23-colly which proves that he was born on 07/03/1951. Therefore, the age of the deceased as on the date of the accident was less than 50 years. Relying upon the judgment of the Hon'ble Supreme Court in case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the learned Counsel submitted that the multiplier to be used was 13 and not 11 as used by the learned Tribunal. He further submitted that since the dependents of the deceased were 4 in number, in terms of the same judgment of the Apex Court, the deduction ought to have been 1/4th towards personal living and expenses of the deceased and not 1/3rd as done by the Tribunal. He also relied upon the judgment of the Apex Court in case of Santosh Devi Vs. National Insurance Company Ltd. and Others, . He, therefore, urged that the appeal be allowed and the compensation be adequately enhanced.

13. I have minutely gone through the record and proceedings and considered the submissions made by the learned Counsel appearing on behalf of the claimants and also the judgments cited by him.

14. In the application u/s 166 of the Act, it was alleged that the deceased was running a bar and restaurant and had taken a contract to take school children to Sharda Mandir High School and back and that his monthly income was about Rs. 15,000/-. In the claim petition, the claimants did not state as to what was the income of the deceased from the business of bar and restaurant and what was the income from the contract to take school children from Sharda Mandir High School and back. In her evidence, the claimant No. 1 (CW1) merely stated that

her late husband was a businessman and was running bar and restaurant at Marcela during night time and was taking school children to and fro to Sharda Mandir High School, Miramar and St. Estevam during day time and was earning net income of over Rs. 15,000/- per month. CW1 produced Form No. Ill i.e. the return of income as Exhibit 26. However, the said return of income pertained to the assessment year 2001-2002. The accident had occurred on 03/03/2001. The return of income was submitted after the date of accident. No tax return forms submitted to the Income Tax Department prior to the accident were produced by the claimants. In my view, the learned Tribunal has rightly refused to rely upon the said tax return form at Exhibit 26. Insofar as the business of running bar and restaurant, is concerned, no documentary evidence like excise license to sell liquor or any other documentary evidence regarding the said business has been produced on record. Even the exact address of the premises in village Marcela wherein the said bar & restaurant was run, has not been mentioned by the claimants.

15. CW1, the claimant No. 1 and CW4, Peter Rangel, who is the cousin of the deceased, deposed that at night, the deceased was running bar and restaurant in the name of "Leo Bar and Restaurant" at Marcela and used to get net profit of about Rs. 4000/- Rs. 500/- to Rs. 600/- per day. According to CW4, many times he used; to be on the cash counter at the request of the deceased. He stated that the turn over during night use to be around Rs. 3500/- to Rs. 4000/- and some times it was even more than Rs. 4,000/-. CW4 stated that after deducting all expenses, the deceased was getting net Rs. 500/- to Rs. 600/- per day, and some times even more.

16. CW5, Mr. Mahesh Naik deposed that after the death of the deceased the bar and restaurant had remained closed for about four months and thereafter he took the same on contract from the wife of the deceased and is paying rent of Rs. 3500/- and is running the said bar and restaurant. According to CW5, he is getting on an average net income of Rs. 600 to ? 700 after meeting all expenses. Insofar as the alleged income from bar and restaurant, is concerned, there is absolutely no documentary evidence. No agreement or other document proving that the said business was taken over by CW5 has been produced on record. It is pertinent to note that CW1, in her examination-in-chief, stated that she was receiving rent of Rs. 84,000/- per annum in respect of the premises which were rented by her husband. If the premises were rented by the husband of claimant No. 1, the statement that the premises remained closed after the death of the deceased and were leased to CW5, Mahesh Naik after the death of husband is false. Again, if the claimant No. 1 used to get Rs. 84,000/- per annum, the evidence that the claimants are receiving monthly rent of Rs. 3500/- per month cannot be correct. Therefore, in my view, the Tribunal has rightly held that the contentions of the claimants that the deceased was earning by running bar and restaurant and the claimants have suffered loss on account of closure " of bar and restaurant is not acceptable.

17. CW1 has stated in her re-examination that her husband used to take 14 children to the school and each child was charged Rs. 400/- and that out of the said amount her husband used to spend some money for snacks for the children. The learned Tribunal accepted the evidence of the claimants that the deceased used to take 14 children to Sharda Mandir High School by Tempo trax and bring them back and used to charge Rs. 400/- per month per child. The deceased, therefore, used to earn around Rs. 5600/- on account of doing said job. However, admittedly the deceased used to provide snacks and drinks to the children and expenditure towards the same was out of the said amount of Rs. 400/- which was paid to him by each child. The Tribunal held that the net profit can be considered as Rs. 3500/- per month considering the expenses incurred by the deceased in providing snacks and drinks to the children and also after deducting petrol expenses and expenses towards wear and tear of the vehicle. In my view, there is absolutely no reason to disagree with the above finding of the Tribunal. It was contended by learned Counsel appearing on behalf of the claimants that towards future prospects, annual increment to the extent of 30% of annual income at the time of the death of the deceased should be given. In the case of "Santosh Devi" (supra), upon which reliance was placed by the learned Counsel, it has been held that an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, should be made where the deceased had a permanent job and was below 40 years of age. The addition should be only 30% if the age of the deceased was 40 to 50 years and there should be no addition, where the age of the deceased is more than 50 years. What is relevant is that the Apex Court has further observed that where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the Court will usually take only the actual income at the time of death. Thus, in the present case, the question of making addition to the actual income of the deceased, towards future prospects, does not arise.

18. In view of the above, the finding of the Tribunal that the net income of the deceased was Rs. 3500/- per month is correct. The learned Tribunal has used the multiplier of 11 by taking that the deceased was 50 years of age as on the date of accident. However, the birth certificate of the deceased produced by CW1 and which is part of Exhibit 23-colly proves that the deceased was born on 07/03/1951. The accident had taken place on 03/03/2001. Therefore, the deceased was less than 50 years of age as on the date of the accident. In the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Apex Court has held that the multiplier to be used for age group of 46-50 years should be 13. Previously, in the case of New India Assurance Co. Ltd. Vs. Charlie and Another, , also, the Apex Court had adopted the multiplier of 13 for age group of 46 to 50 years. In view of the above, the multiplier of 11 used by the learned Tribunal is not correct and it ought to be 13. The annual income of the deceased was Rs. 42,000/-. By applying the multiplier of 13 the total comes to 75,46,000/-. The learned Tribunal has deducted 1/3rd from the amount towards the personal expenses of the deceased. However, in the case of

"Sarla Verma and others" (supra), considering the previous decisions, the Apex Court held that when the number of dependent family member is 4 to 6, the deduction should be 1/4th. In the present case, the dependents are 4 in number, out of which one is widow and other three are minor children. Therefore appropriate deduction should be 1/4 and not 1/3rd. By deducting 1/4th from the said amount i.e. 71,36,500/- from 75,46,000/-, the reminder is 74,09,500/-. Therefore, the loss of dependency works out to 74,09,500/-. Since the claimants have produced on record the medical bills at Exhibit 25-colly which show that the expenditure was of 76,163/-, they are entitled to the said amount of 76,163/- towards medical expenses. In the case of "Sarla Verma and others" (supra) the Hon"ble Apex Court further held that the claimants, in that case, were entitled to compensation of 75,000/- under the head of "Loss of estate"; 75,000/- towards funeral expenses, and 710,000/- as loss of consortium. The learned Tribunal, in the present case, has granted 72,500/- towards transport and other miscellaneous expenses; 72,500/- towards funeral and other religious rites; 715,000/- towards the loss of love and affection and loss of estate and further 715,000/- towards loss of consortium to the claimant No. 1. The amounts awarded by learned Tribunal under the above heads are just and reasonable and after adding the said amounts to the amount of loss of dependency, the total compensation comes to 74,50,663/- which can be rounded up to 74,50,700/-.

19. In view of the above, I am of the view that the impugned judgment and award requires to be modified to the extent as above and the claimants are entitled to enhancement as determined above." Therefore, interference is warranted with the impugned judgment and order insofar as quantum of the compensation is concerned.

20. In the result, a) The First Appeal is partly allowed.

b) The claimants and entitled to total compensation of 74,50,700/-. The respondents, jointly and severally, shall pay the said amount to the claimants along with interest at the rate of 6% per annum from the date of filing of the petition to the date of payment of entire sum. The amount already paid u/s 140 of the Act shall be deducted.

c) Cross-objection is rejected.

Appeal and Cross-objection stand disposed of accordingly.